

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Draft Programmatic Environmental Assessment of)	WT Docket No. 08-61
The Antenna Structure Registration Program)	WT Docket No. 03-187

COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby responds to the Commission’s Public Notice seeking comment on the Draft Programmatic Environmental Assessment (“Draft PEA”) of its Antenna Structure Registration (“ASR”) program.¹ The Draft PEA analyzes the potential environmental impact of registered towers, particularly with respect to impacts on migratory birds and threatened and endangered species. It concludes that certain tower features, such as lighting, tower support systems, tower height, and location cause higher levels of avian mortality.² It finds, however, that the impacts of the ASR program on all resources, including migratory birds, are not significant.³ It sets forth a number of options for modifying the ASR program to lessen the environmental impacts of registered towers.

Verizon Wireless applauds the Commission’s efforts to complete the draft PEA and to resolve this long-standing issue. It supports the Commission’s draft findings that registered

¹ Public Notice, *Wireless Telecommunications Bureau Seeks Comment and Announces Public Meeting on its Draft Programmatic Environmental Assessment of the Antenna Structure Registration Program*, WT Docket Nos. 08-61, 03-187, 26 FCC Rcd 13841 (WTB rel. Aug. 26, 2011).

² Draft Programmatic Environmental Assessment of the Antenna Structure Registration Program, Prepared by URS Group Inc. on behalf of the Federal Communications Commission, released August 26, 2011 (“Draft PEA”), at ix-x, and xi-xii.

³ *Id.*, at xiii.

towers do not significantly impact environmental resources. Based on this finding and the Commission's stated goal of removing barriers to implementing wireless broadband technologies in carrier networks, the Commission should adopt the Alternative that has the least impact on carriers' broadband deployment initiatives. That Alternative is the No Action Alternative.

I. BACKGROUND

The draft PEA is national in scope and considers the programmatic impacts of the ASR program in a national context.⁴ The Draft PEA finds that collisions with the towers regulated under the ASR Program result in approximately 5 million migratory bird deaths each year and that those collisions will continue. It finds, however, that other causes – such as anthropogenic sources and cat predation – result in more than 2 billion migratory bird deaths. Given the estimated migratory bird population in the United States of 10-20 billion, the percentage of birds killed by collisions with towers is only 0.2 percent of the total bird deaths and approximately 0.05 percent of the migratory bird population. It concludes, therefore, that the cumulative impact of towers on migratory birds is not significant.⁵

The Draft PEA sets forth a number of action alternatives, three of which would require applicants to provide more comprehensive evaluations of potential effects on resources, especially migratory birds. These alternatives are: the No Action Alternative – which relies primarily the Commission's proposed 30-day public notice requirement to identify and resolve environmental issues caused by proposed towers; Alternative 1 – which would implement bird-friendly lighting changes if approved by the FAA; Alternative 2, Option A – which would

⁴ *Id.*, at viii.

⁵ *Id.*, at xiii.

require an environmental assessment (EA) to be filed for most registered towers and many modifications to those towers; Alternative 2, Option B – which would require EAs to be filed for certain towers located in near Eagle’s nests or near certain geographical features, such as ridgelines, coastal zones and bird staging areas; and Alternative 2, Option C – which would require EAs for towers over 450 feet tall.⁶

The Draft PEA evaluates each Alternative and Option, and considers that the number of towers is expected to increase over time. For the No Action Alternative, the Draft PEA concludes that bird deaths due to tower collisions will increase to 6.6 million annually -- as a result of the expected increase in the number of towers. It also concludes, however, that the impact to birds at a national level would not be significant.⁷ For Alternative 1, the Draft PEA concludes that bird deaths would decrease due to the change in lighting and that the resulting total impact on birds would not be significant.⁸ For Alternative 2, Options A, B and C, the Draft PEA concludes that the number of avian mortalities due to tower collisions would increase due to the increase in towers, but that the increase of mortalities would be offset, to some extent, by the mitigation measures tower owners would be required to take as a result of the EA process. The reduction in bird deaths due to mitigation efforts is expected to be far less under Option C than under Options A and B. For each Option under Alternative 2, the Draft PEA concludes that the net impact to birds would not be significant.⁹

⁶ *Id.*, at vii-viii.

⁷ *Id.*, at x.

⁸ *Id.*, at x-xi.

⁹ *Id.*, at xi-xiii.

II. DISCUSSION

A. Based on the Draft PEA Findings, the Commission Must Adopt the No Action Alternative.

The Commission's rules provide that "Applicants shall prepare EAs for actions that may have a significant environmental impact."¹⁰ The Draft PEA, however, concludes that, at the nationwide, programmatic level collisions with registered towers do not have a significant impact on migratory birds or other environmental resources.¹¹ Moreover, the Draft PEA concludes that none of the Alternatives considered will result in a significant impact on migratory birds.¹² While the Draft PEA recognizes that individual towers may have a significant impact on migratory birds or other environmental resources at the local level,¹³ those impacts are likely to be considered and resolved through the environmental reviews that applicants must conduct prior to submitting the application for approval -- which typically involve consultation with the United States Fish and Wildlife Service ("USFWS") for registered towers -- and through the proposed 30-day notification process.¹⁴ Accordingly, under the Commission's own rules, assuming the Draft PEA findings are adopted, there is no basis for the Commission to conclude that EAs must be prepared for any registered towers. As such, the only alternative that the Commission may adopt pursuant to the review it has conducted is the No Action Alternative.

¹⁰ 47 C.F.R. §1.1308(a).

¹¹ Draft PEA, at x.

¹² *Id.*, at x-xiii.

¹³ *See id.*

¹⁴ *See* Public Notice, Wireless Telecommunications Bureau Invites Comment on Draft Environmental Notice Requirements and Interim Procedures Affecting the Antenna Structure Registration Program, DA 11-558, WT Docket Nos. 08-61 and 03-187, 26 FCC Rcd 4099 (WTB rel. March 25, 2011).

B. Alternative 2, Options A and B Would Have a Significant Impact on Carrier's Build Plans and on Wireless Broadband Deployment.

Although the Commission is bound by the Court's mandate in *American Bird Conservancy, Inc. v. FCC*,¹⁵ and the provisions of federal environmental laws to consider the impact of towers on migratory birds and other environmental resources, it should not take up rules to protect migratory birds without evaluating the impact those rules will have on other important policy objectives. In particular, the Commission should ensure any new rules do not impede initiatives to deploy wireless broadband services.

In a Notice of Inquiry adopted earlier this year, the Commission is considering actions it can take to expand the reach and reduce the costs of broadband deployment by improving government policies for access to rights of way and wireless facilities siting.¹⁶ In response to the *Broadband Siting NOI*, Verizon detailed a number of delays and obstacles associated with USFWS reviews of towers for impacts on endangered and threatened species, critical habitats and migratory birds. It commented that these delays and obstacles are likely to increase if the Commission imposes new rules to protect migratory birds, and recommended that the Commission work with USFWS to reduce these delays and standardize reviews.¹⁷

As discussed above, based on the findings of the Draft PEA, the Commission's rules require adoption of the least intrusive Alternative – the No Action Alternative. Adopting this

¹⁵ 516 F.3d 1027 (D.C. Cir. 2008) (“*American Bird Conservancy*”).

¹⁶ *Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, Notice of Inquiry, WC Docket No. 11-59, 26 FCC Rcd 5384 (2011) (“*Broadband Siting NOI*”).

¹⁷ Comments of Verizon, WC Docket No. 11-59, filed July 18, 2011. See also CTIA Comments, WC Docket No. 11-59, filed July 18, 2011 at 35 and 42-43 (discussing the likelihood of delays associated with the FCC's proposed ASR notice requirements).

Alternative is also entirely consistent with the Commission's broadband deployment goals.

Conversely, two of the options set forth in the Draft PEA, Alternative 2, Options A and B, would create significant burdens and impose delays on the wireless facilities siting process and would impede carrier efforts to implement wireless broadband technologies in their networks.

Over the past three years, Verizon Wireless has filed approximately 530 ASR applications that did not require an EA to be filed, an average of almost 180 per year. Virtually every one of these applications would require an EA to be prepared, filed, reviewed and acted upon under Option A. While determining the number of registrations that would be affected by Option B is extremely difficult – a factor which by itself would impose significant costs and delays on applicants if this Option were adopted – the company estimates that close to 60 percent of its registered sites are located in geographic areas that could require EAs to be filed under Option B.

Preparing an EA costs between \$3500 and \$5000 depending on the nature of the environmental impact and takes 30-60 days to complete. Once completed, the EA must be filed and put on public notice. The applicant must then wait 30 days for comments to be filed, plus a minimum of 15 days for Commission review and action. Under the best case scenario, an EA would take 75 days to prepare, file and review, but that scenario rarely occurs. Typically EAs take three to four months before a Finding of No Significant Impact ("FONSI") is issued, and often drag on much longer if the EA is contested, other agencies such as the USFWS must be consulted, or if mitigation is required to resolve a potential environmental impact. Moreover, should either of these Options be adopted, Verizon Wireless would expect the delays to increase sharply over the current experience as the Commission will be faced with hundreds if not thousands of additional EAs to process, review and act upon each year. Without a significant

increase in staff – something that is unrealistic given the ongoing efforts to reduce the Federal budget deficit – the timeframes for Commission review and action on EAs can be expected to increase dramatically.

It is clear, from a policy perspective, that Alternative 2, Options A and B will impose significant costs and delays on wireless facilities siting, thus hindering the Commission's goals of removing barriers to deploying wireless broadband facilities. As discussed above, given that the Draft PEA has concluded that registered towers do not have a significant impact on migratory birds or other environmental resources, and that Options A and B will not have a significant impact on these environmental resources, the Commission cannot adopt either of these Options to protect environmental resources. Accordingly, there is absolutely no legal or policy basis for the Commission to adopt either of these Options.

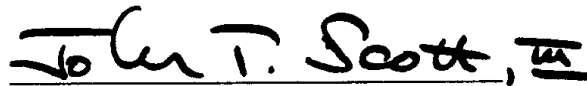
III. CONCLUSION

Based on the analysis and conclusions set forth in the Draft PEA, the only alternative that the Commission may adopt is the No Action Alternative. Should the Commission decide that some Alternative other than the No Action Alternative is necessary to protect migratory birds or other environmental resources, it should not adopt Alternative 2, Options A or B. Both of these options would impose significant costs and delays on wireless broadband deployment.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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